

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

BRANSEN B.,

Claimant,

vs.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2011080883

**DECISION**

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, in San Bernardino, California on October 3, 2011.

The Inland Regional Center (agency) was represented by Robert J. Mendes, Consumer Services Representative, Fair Hearings and Legal Affairs.

Claimant was represented by his parents.

Oral and documentary evidence was received and the matter was submitted on October 3, 2011.

**ISSUES**

1. Is claimant eligible for agency services under the qualifying diagnosis of autistic disorder?
2. If claimant is not eligible for services should the agency be required to provide a further assessment of claimant?

## FACTUAL FINDINGS

1. Claimant will be three years old this month (October) and he has been receiving agency services as part of the Early Start Program due to perceived developmental delays and claimant's resulting "at risk" status.

2. By letter, dated June 1, 2011, the agency informed claimant's parents (parents) of the following:

Since Bransen will be turning 3 in October, he will be graduating from the Early Start Program with Inland Regional Center at that time. He does not continue with Regional Center after age 3 since he does not have significantly impacting autism, mental retardation, epilepsy, or cerebral palsy. . . ." (Exh. 1)

3. Parents timely filed an appeal from the agency's determination that claimant did not qualify for agency services and the instant hearing ensued.

4. In claimant's Fair Hearing Request parents made the following request on claimant's behalf: "I would like another psychological evaluation done on behalf of my son by either Dr. Gross or Dr. Niekirk. I feel Dr. Brooks' evaluation is highly inaccurate due to [claimant] already receiving an autism diagnosis by both his pediatrician and neurologist and prior family history as his brother is also autistic. It [a further evaluation] is needed to determine proper eligibility for school services." (Exh. 2)

### *Evaluations/Assessments*

5. In his August 4, 2009, Genetic Medical Summary, James Bartley, M.D., a medical genetic consultant, wrote:

I evaluated Bransen in the Genetics Clinic on 8-4-09. Bransen was evaluated in the Intake 3 to 4 months ago and he was found to be delayed in motor communication and fine motor. However, since that time till today, he has certainly caught up. At 10 months of age, he is pulling to stand, he is crawling, he is interactive, he loves to crawl to you, pull up on your leg and jump up and down while you are holding his hands. He smiles, he coos, he appears to have totally normal development at this time.

He was evaluated because his older brother was diagnosed as having autism in Nevada. However, he [the older brother] did not start a program. The family is having him enrolled in the Regional Center as a consumer because of his autism. With my interaction with him today, I would agree that he has autistic characteristics and probably be categorized in the Asperger's end of the spectrum of autism.

At this point in time for Bransen, I would suggest no further evaluation or testing. . . (Exh. 11)

6. On August 16, 2010, claimant's mother (mother) took claimant to Gregory Aaen, M.D. at Loma Linda University Child Neurology Clinic with the chief complaint of "language delay." Mother told Dr. Aaen about her concern that claimant suffered from autism. Dr. Aaen's chart notes concerning the visits reveal that no tests were performed. Nonetheless, based on his observations of claimant and discussions with mother, Dr. Aaen arrived at the following impression: "Autistic Spectrum Disorder." (Exh. A)

7. On November 8, 2010, agency staff psychologist Sandra Brooks, Ph.D., evaluated/assessed claimant. Dr. Brooks used the following during her assessment: Childhood Autism Rating Scale (CARS); Autism Diagnostic Observation Schedule – Module #1 (ADOS); parent interview; observations; and file review. Claimant's score on the CARS was 23, which is in the "Non-autistic range." His ADOS score was 1, which although indicating a "mild anomaly" did not nearly reach the autism cutoff score of 12 or the autism spectrum cutoff score of 7. Overall, Dr. Brooks concluded:

Bransen is an adorable little boy. Although, his mother reported a number of autistic like behaviors, none of these behaviors were observed during today's evaluation. The examiner feels that Bransen may have difficulty with sensory integration; however, the examiner did not observe significant delays in social interaction. In addition, no repetitive or stereotypical behaviors were observed . . . Bransen does not appear to be at risk for a future diagnosis of Autistic Disorder at this time. (Exh. 8)

8. On August 15, 2011, the Moreno Valley Unified School District (district) assessed claimant to see if he needed special education. The district's multidisciplinary team consisted, in part, of a psychologist, a speech pathologist, and an occupational therapist. The following tests were used during the evaluation: the Wechsler Preschool and Primary Scale of Intelligence-3<sup>rd</sup> Edition; the Developmental Profile-3<sup>rd</sup> Edition; the Childhood Autism Rating Scale-2<sup>nd</sup> Edition- High Functioning Version; and the Behavior Assessment System for Children-2<sup>nd</sup> Edition (BASC-2) Parent Edition. In addition to the testing, claimant's parents were interviewed and, on August 31, 2011, claimant's activities were observed in different environmental settings by a speech pathologist and two different psychologists. Based on the testing, interviews and observations, the district's multidisciplinary team reached the following conclusion:

The results of these assessments found no reasons for Bransen to receive services through special education. His overall cognitive functioning is in the above average range with no areas of cognitive development falling below the average range. His speech and language skills were found to be age appropriate and the occupational therapy evaluation did not observe any sensory or motor difficulties. Mother describes unwanted behaviors and

sensory difficulties that Bransen exhibits in the home, but these were not observed by any of the clinicians during their evaluations and extensive observations, and his ability to learn and to interact with others appropriately does not appear negatively impacted by these reported behaviors. It would seem Bransen's educational needs will be best met within a general education environment with typically-developing students. (Exh. 18)

### *Parents' Position*

9. Parents testified that they have an older son with autism and that claimant is exhibiting many of the same atypical characteristics as his brother, therefore, they conclude that claimant must suffer from autism. In addition to parents' observations, parents provided the following two documents in support of their position that claimant is autistic: A copy of Dr. Aaen's chart note which was quoted in Finding 6, above; and a brief "Final Report" authored by Dr. Lauren M. Simon, MD, MPH, which stated: "[Claimant] has been receiving care for autism since his diagnosis in 10/12/2010. Please provide services for him for this diagnosis." (Exh B) Parents believe that none of the prior assessments of claimant were valid because the examiners did not spend enough time observing claimant in different environmental settings.

### *Expert Testimony*

10. Agency Staff Psychologist, Dr. Greenwald, reviewed all of the documentary evidence in this matter and testified that "there are very robust findings to support the conclusion claimant does not have autistic disorder" as defined by the Diagnostic and Statistical Manual (IV) Text Revision (DAM-IV-TR)

11. Agency Staff Psychologist, Dr. Brooks, also testified during the hearing and addressed the parents' concerns about their perceived lack of extensive observations of claimant. According to Dr. Brooks, the diagnostic tests administered to claimant by the agency and by the district are specifically designed to elicit behaviors indicative of autistic disorder. Additionally, Dr. Brooks is confident that no further observations/assessments would prove productive since claimant has been observed by different observers over a period of time resulting in "many samples" of observations. It is significant that the conclusion(s) that claimant does not suffer from autistic disorder is "consistent across observers" in different environmental settings, over time.

## LEGAL CONCLUSIONS

1. In order to qualify for services Welfare and Institutions Code section 4500, et seq. requires that a claimant suffer from a developmental disability. Welfare and Institutions Code section 4512, subdivision (a) defines "developmental disability" as follows:

"... a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and

constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

2. The DSM-IV-TR lists criteria which must be met to provide a specific diagnosis of an Autistic Disorder, as follows:

“A. A total of six (or more) items from (1), (2) and (3), with at least two from (1), and one each from (2) and (3):

(1) Qualitative impairment in social interaction, as manifested by at least two of the following:

(a) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.

(b) Failure to develop peer relationships appropriate to developmental level.

(c) A lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest).

(d) Lack of social or emotional reciprocity.

(2) Qualitative impairments in communication as manifested by at least one of the following:

(a) Delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gestures or mime).

(b) In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others.

(c) Stereotyped and repetitive use of language or idiosyncratic language.

(d) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.

(3) Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:

(a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.

(b) Apparently inflexible adherence to specific, nonfunctional routines or rituals.

(c) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements).

(d) Persistent preoccupation with parts of objects

B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) Social interaction, (2) language as used in communication, or (3) symbolic or imaginative play.

C. The disturbance causes clinically significant impairment in social, occupational, or other important areas of functioning. (*Id.* at p. 75.)”

3. According to the DSM-IV-TR, the foregoing specific clinical criteria must exist to diagnose autistic disorder. In this case, the evidence revealed that claimant does not satisfy the required number of elements within the autism criteria schedules of the DSM-IV-TR. Consequently, while claimant may have Asperger’s, which is on the “autism spectrum,” he does not suffer from autistic disorder as defined by the DSM-IV-TR. While autistic disorder is a qualifying condition, Asperger’s and other conditions that are on the “autism spectrum,” are not.

4. The facts, considered as a whole, reveal that claimant does not have autistic disorder, or any other qualifying “Developmental Disability;” therefore, he is not eligible for agency services.

5. Ample assessments have been conducted to date; therefore, further assessments are not necessary at this time.

## ORDER

1. The agency's conclusion that claimant is not eligible for agency services is upheld.
2. Claimant's request for further agency assessment(s) is denied.

DATED: October 6, 2011.

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE:

**This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**